IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO. 9 OF 2002

The Maharashtra Staff Financial
Corporation. .. Petitioner.

vs.

Mr. Ashish Vithal
Bhatia & Ors. .. Respondents.

Mr. M. Rathod with Ms. U. Zhaveri
for petitioner.
Mr. V. Kalair with B.M. Raikar for
Respondent Nos. 2/3.

CORAM : S.U.KAMDAR, J.
DATE : 28th MARCH, 2005.

P.C.

1. The present petition is filed under section 31 (1) (aa) of the State Financial Corporations Act, 1951 for recovery of the amount due and outstanding by the company from the guarantors. Some of the material facts in the present case are briefly enumerated as under :-

2. That the petitioner was the financial institution and gave loan to one M/s. Angad

Malleable Castings Pvt. Ltd., and in respect of the said claim the original respondent nos. 1 and 2 to 4 have executed the guarantee which is annexed as Exhibit "B" to the petition. The said guarantee is unconditional absolute and a continuing guarantee. In pursuance of the said guarantee executed, the petitioner disbursed to the company various amounts and a sum of Rs. 38.28 lacs was paid by the petitioner at the interest rate of 14.5% per annum. It is the case of the petitioner that the deed of guarantee dated 14.2.1990 is payable on demand without any default. In view of the fact that the respondent no. 5 company committed defaults, a notice was issued under section 29 of the State Financial Corporations Act on 26.4.1992 and the assets of the said company were taken over. On 27.5.1994 the respondent no. 5 requested for the reschedulement of the instalments and accordingly the said company was permitted to function. On 27.2.1997, the respondent no. 5 made an offer of accepting the amount as one time settlement of Rs. 49 lakhs. The said offer was thereafter increased to Rs. 60 lacs. however, the respondent no. 5 committed default to pay the amount as agreed under the one time proposal also. Ultimately a fresh notice for taking over possession of the said property was given on 9.3.2001. An advocate’s notice was given and the personal guarantee of the original respondent nos. 1 and 2 to 4 were invoked.

The claim of the petitioner as on 23.3.2002 was Rs. 2,23,99,474/- as per the particulars of claim. In view of the aforesaid invocation of the bank guarantee, the present petition is filed under section 31 (1)(aa) of the State Financial Corporations Act against the legal heirs of respondent no. 1 who has since expired and respondent nos. 2 to 4. The petitioner has filed an affidavit dated 24.1.2005 stating therein the claim as 4,19,45,421/- as due and payable. The said affidavit is filed in accordance with the judgment of the Apex Court in the case of Central Bank vs. Ravindra reported in 1996 (5) SCC 279. In so far as the assets of the respondent no. 5 company are concerned, they are not yet sold as the Receiver is appointed in another suit proceedings.

3. The learned counsel appearing for the respondent raised two defences. Firstly, that of limitation. It has been contended that since the company i.e. respondent no. 5 has committed various defaults, the period of limitation commences from the last default. In view of the judgment of this Court in Misc. Petition No. 49 of 1999 in the case of Maharashtra State Finance Corporation vs. Magna Elastomeric Roller Pvt. Ltd., & Ors., decided on 28.2.2005 wherein it has been expressly held that the period of limitation so far as guarantors are concerned commences from the date of invocation of

the guarantee. In the present case, the invocation of the guarantee is on 9.3.2001. The petition is filed on 27.3.2002 and, therefore, the said petition is within time.

4. The second contention raised by the learned counsel for the respondent is that on 3.8.96 and 3.8.98 three of the directors resigned from the directorship of the company and communicated the same to the company. The aforesaid submission has no merit whatsoever. A guarantor cannot discharge himself from the guarantee which has been executed by him by mere resignation or by communication thereof. In view of the aforesaid, I pass the following order:-

> The respondent nos. 2 to 4 are directed to make payment of the sum of Rs. 4,19,45,421/- with further interest at the rate of 12% per annum. In so far as respondent nos. 1(a) and 1(b) are concerned, they will be only liable to the extent of the assets coming to their hands.

5. Petition disposed of accordingly. No order as to costs.